

United States Court of Federal Claims

No. 07-393C

Filed August 10, 2007

NOT TO BE PUBLISHED

MUHAREM KRDZALIJA,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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Immigration and Nationality Act,

8 U.S.C. § 1182;

Motion for Summary Dismissal,

RCFC 12(b)(1), RCFC App'x A;

Social Security Benefits,

42 U.S.C. § 405(g)-(h);

Tucker Act, 28 U.S.C. § 1491.

Muharem Krdzalija, Bosnia, *pro se*.

Christopher J. Carney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., counsel for Defendant.

MEMORANDUM OPINION AND FINAL ORDER

BRADEN, *Judge*

I. RELEVANT FACTS AND PROCEDURAL HISTORY.¹

Between 1999 and 2002, Plaintiff worked in the United States. *See* Compl. ¶ 1. On January 24, 2003,² the United States Department of Justice Immigration and Naturalization Service (“INS”) sent a letter notifying Plaintiff that:

In accordance with the provisions of section 212(a)(9) of the Immigration and Nationality Act (Act), you are prohibited from entering or attempting to enter, or being in the United States . . . [a]t any time because you have been found inadmissible or excludable under section 212 of the Act, or deportable under section

¹ The relevant facts and procedural history were derived from: Plaintiff’s June 12, 2007 Complaint (“Compl.”) and exhibits hereto (“Ex. __”); and Defendant (“Government”)’s July 30, 2007 Motion for Summary Dismissal (“Gov’t Mot.”).

² The letter is actually dated January 24, 2003. The court assumes that this is a typographical error.

241 or 237 of the Act, and ordered deported or removed from the United States, and you have been convicted of a crime designated an aggravated felony.

Compl. Ex. 1.

After receiving the letter, Plaintiff appeared before the United States Embassy in Zagreb, Croatia requesting social security benefits, because he believed he “ha[d] enough credits to qualify for benefits.” Compl. ¶¶ 1-2. The Embassy informed Plaintiff that he was not entitled to these benefits. *Id.*

On June 12, 2007, Plaintiff filed a Complaint in the United States Court of Federal Claims requesting \$50,000 in unpaid social security benefits. *See* Compl. ¶ 1. On July 16, 2007, Plaintiff filed an Application to Proceed *In Forma Pauperis*.

On July 30, 2007, the Government filed a Motion for Summary Dismissal of *Pro Se* Complaint to avoid unnecessary briefing and case management. *See* Gov’t Mot. at 1 (citing RCFC App’x A ¶ 1 (The case management procedures of the United States Court of Federal Claims “are intended to . . . assist in the early identification of issues, minimize the cost and delay of litigation, and enhance the potential for settlement.”)).

II. DISCUSSION.

A. Jurisdiction.

The jurisdiction of the United States Court of Federal Claims is established by the Tucker Act. *See* 28 U.S.C. §1491 (2006). The Act grants the court “jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. §1491(a)(1).

The Tucker Act, however, is merely “a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages . . . the Act merely confers jurisdiction upon it whenever the substantive right exists.” *U.S. v. Testan*, 424 U.S. 392, 398 (1976). Therefore, in order to pursue a substantive right within the jurisdiction of the Tucker Act, a plaintiff must identify and plead an independent contractual relationship, Constitutional provision, federal statute, and/or executive agency regulation that provides a substantive right to money damages. *See Todd v. United States*, 386 F.3d 1091, 1094 (Fed. Cir. 2004) (“[J]urisdiction under the Tucker Act requires the litigant to identify a substantive right for money damages against the United States separate from the Tucker Act[.]”); *see also Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc) (“The Tucker Act does not create a substantive cause of action; in order to come within the jurisdictional reach and the waiver of the Tucker Act, a plaintiff must identify a separate source of substantive law that creates the right to money damages. In the parlance

of Tucker Act cases, that source must be ‘money-mandating.’” (internal citations omitted)).

B. Pro Se Plaintiff Pleading Requirements.

In the United States Court of Federal Claims, the pleadings of a *pro se* plaintiff are held to a less rigid standard than those of the litigants represented by counsel. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (*pro se* complaints, “however inartfully pleaded,” are held to “less stringent standards than formal pleadings drafted by lawyers” (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972))). It has been the tradition of this court to examine the record “to see if [a *pro se*] plaintiff has a cause of action somewhere displayed.” *Ruderer v. United States*, 188 Ct. Cl. 456, 468 (1969). Nevertheless, “[t]his latitude . . . does not relieve a *pro se* plaintiff from meeting jurisdictional requirements.” *Skillo v. United States*, 68 Fed. Cl. 734, 739 (2005) (quoting *Bernard v. United States*, 59 Fed. Cl. 497, 499, *aff’d*, 98 Fed. App’x 860 (Fed. Cir. 2004)).

C. Standard For Decision On A RCFC 12(b)(1) Motion To Dismiss.

A challenge to the “court’s general power to adjudicate in specific areas of substantive law . . . is properly raised by a [Rule] 12(b)(1) motion.” *Palmer v. United States*, 168 F.3d 1310, 1313 (Fed. Cir. 1999); *see also* RCFC 12(b)(1) (“Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter [.]”).

When considering whether to dismiss an action for lack of subject matter jurisdiction, the court is “obligated to assume all factual allegations to be true and to draw all reasonable inferences in plaintiff’s favor.” *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995). Nonetheless, a plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988) (“[O]nce the [trial] court’s subject matter jurisdiction [is] put in question, it [is] incumbent upon [plaintiff] to come forward with evidence establishing the court’s jurisdiction.”).

D. The United States Court Of Federal Claims Does Not Have Jurisdiction To Adjudicate Social Security Benefit Claims.

The United States Court of Federal Claims does not have jurisdiction to adjudicate social security benefit claims. *See Marcus v. United States*, 909 F.2d 1470, 1474 (Fed. Cir. 1990) (holding that the Claims Court does not have jurisdiction under the Tucker Act, 28 U.S.C. § 1491(a)(1) (1988), to adjudicate claims for social security benefits). Such claims must first be presented to the United States Social Security Administration for a final decision, and any appeal must be filed in a United States District Court. *See* 42 U.S.C. § 405(g)-(h) (“Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party . . . may obtain a review of such decision . . . in the *district court* of the United States for the judicial district in which the plaintiff resides . . . or, if he does not reside or have his principal place of business within

any such judicial district, in the United States District Court for the District of Columbia.” (emphasis added)).

Although Plaintiff generally invokes the United States Constitution as the basis for his claim,³ the Tucker Act does not grant the United States Court of Federal Claims jurisdiction to adjudicate claims based on Constitutional provisions that are not money-mandating. *See* 28 U.S.C. § 1491; *see also e.g., Crocker v. United States*, 125 F.3d 1475, 1476 (Fed. Cir. 1997) (holding that the United States Court of Federal Claims does not have jurisdiction under the Tucker Act to adjudicate Fifth Amendment due process and seizure claims); *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (holding that the United States Court of Federal Claims does not have jurisdiction under the Tucker Act to adjudicate Fifth and Fourteenth Amendment due process claims and Fourteenth Amendment equal protection claims); *United States v. Connolly*, 716 F.2d 882, 887 (Fed. Cir. 1983) (holding that the United States Court of Federal Claims does not have jurisdiction under the Tucker Act to adjudicate First Amendment claims).

In addition, the United States Court of Federal Claims does not have jurisdiction over: claims sounding in tort or for civil wrongs committed by the agents of the United States; for declaratory judgment or injunctive relief that is not incident of or collateral to a monetary judgment; or for civil rights violations. *See, e.g., Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997) (holding that the United States Court of Federal Claims does not have jurisdiction under the Tucker Act to adjudicate tax claims sounding in tort or for independent claims of declaratory or injunctive relief); *Marlin v. United States*, 63 Fed. Cl. 475, 476 (2005) (holding that the United States Court of Federal Claims does not have jurisdiction under the Tucker Act to adjudicate tort claims and claims for civil rights violations). Accordingly, to the extent that the Complaint attempts to allege any of these claims, the United States Court of Federal Claims does not have jurisdiction to adjudicate them.

Therefore, even affording the *pro se* Complaint the traditional deference, the court does not discern any claim over which the United States Court of Federal Claims has jurisdiction. Accordingly, the Government’s Motion for Summary Dismissal must be granted.

³ *See* Compl. ¶ 1 (“In this case no have Law Prohibition in Constitution of United State[s] of America”).

III. CONCLUSION.

For the aforementioned reasons, the Government's July 30, 2007 Motion for Summary Dismissal is granted. The Clerk of the United States Court of Federal Claims is directed to dismiss the June 12, 2007 Complaint.

IT IS SO ORDERED.

SUSAN G. BRADEN
Judge